Chapter I

INTRODUCTION TO THE HOME PROGRAM

The HOME Program was created under Title II (the HOME Investment Partnerships Act) of the National Affordable Act of 1990, and has been amended several times by subsequent legislation. The objectives and intent of the HOME Program is to: Provide decent affordable housing to lower-income households; strengthen the ability of state and local governments to provide housing; expand the capacity of non-profit housing providers; and leverage private sector participation. In addition, Congress intended the HOME program to operate in ways that will help the participating jurisdiction (PJ) undertake its own affordable housing strategy.

HOME funds are allocated by formula to PJs. The formula is based in part on factors including population, age of units, substandard occupied units, and the number of families below the poverty line. The State of California, Department of Housing and Community Development is the PJ for all jurisdictions of the State that do not directly receive a HOME allocation from HUD and are not participants in an urban county agreement with a county that receives direct HOME funding. Cities and counties (State Recipients) that do not qualify for a direct allocation participate in the HOME Program by applying for funds made available by the State. In addition, each PJ must reserve a minimum of 15 percent of its annual allocation for activities undertaken by qualified and State-certified Community Housing Development Organizations (CHDOs).

Funds Distributed through Notice of Funding Availability

The Department adopted regulations (Section 8200 et seq. of Title 25), which establish procedures for the award and disbursement of HOME funds and establish policies and procedures for the use of these funds. The Department issues an annual Notice of Funding Availability (NOFA) announcing the availability of federal funds received for the HOME Program.

The NOFA invites eligible applicants to submit an application, provides certain information about the HOME Program and establishes criteria and requirements that applicants must meet. The Department evaluates and rates applications by criteria established in both the NOFA and regulations. Applications are placed in one of two competing groups (programs and projects) and then funded in descending order. Applications that qualify for the CHDO set-aside are funded first based on their scores. Once the set-aside has been achieved, all remaining applications are funded based on their scores relative to all other applications with the highest scoring application funded first.

Be on the Lookout for Your Standard Agreement

Successful applicants receive a letter from the Department that constitutes a conditional reservation of funds. After that, successful applicants should receive a letter and five (5) copies of the State Standard Agreement. Please execute all five copies, in accordance with the instructions on the transmittal letter. The person executing the State Standard Agreement must be authorized by the governing body's resolution to execute said Agreement. Please note that the State Standard Agreements must be executed and returned to the Department within 45 days or the conditional reservation of funds will be cancelled.

Once fully executed, the State Standard Agreement represents a mutually agreed to, legally binding contract between the Department and the State Recipient or the CHDO. State Recipients and CHDOs are referred to as "HOME contractors." The Standard Agreement does not create an absolute obligation by the Department to the HOME contractor.

IMPORTANT: READ YOUR STANDARD AGREEMENT

Please note that the State Standard Agreement describes the scope of work and establishes completion and other important dates, the contract amount, and match and leveraging requirements.

All work activities eligible for reimbursement under this Agreement must comply with the Standard Agreement and the original HOME Application under which the program or project was funded. You are not permitted to change the activity for which you were funded, nor can you move funding from one funded activity to another without prior Department approval.

The HOME contractor must meet all the specific pre-disbursement conditions, set-up conditions, and other appropriate special conditions and requirements stated in the Standard Agreement within specific time periods in order for the Department to disburse any funds. The obligations to meet these conditions are in effect from the moment the Agreement has been fully executed by both parties. If these terms and conditions are not met, the Department may withhold the funds and may even terminate the Agreement. Most changes require a formal contract amendment, which must be executed before the change may occur.

Keep a Copy of Your Standard Agreement in Your Program Files

Every person responsible for either administering the State Standard Agreement for your agency or implementing the HOME-funded activity should review the Standard Agreement in its entirety. If the original Standard Agreement is kept in another part of your organization, and you are playing a key role in implementing the funded activity, make yourself a copy for easy reference and availability.

The Department may ask for clarification or changes in your application before completing the processing of the State Standard Agreement. For example, an applicant may be requested to obtain another resolution from the governing body addressing all of the concerns of the Department, a CHDO may be asked to more fully describe its role under the HOME definitions of an eligible CHDO, or a State Recipient may be requested to modify its program guidelines to comply with HOME regulations or requirements.

The Standard Agreement is organized as follows:

- The first page of the Agreement specifies the contractor, the contract number, the total contract amount and the effective date of the Agreement. This date is found in the lower right hand corner of this page;

- The body of the Agreement contains requirements, terms, and conditions, cites various Federal and State laws and regulations that the contractor must comply with while performing the "Work" of the Agreement, and incorporates the contractor's HOME Application by reference to the Agreement;

- Attachment A describes the "Work" to be performed; the amount of HOME funds allocated to performing the "Work," including administrative amounts; completion dates and expenditure milestones; and stipulates leverage and match contributions;

- Attachment B establishes the requirements and pre-disbursement conditions for project set-up and disbursement of funds. Pre-disbursement conditions must be met to the Department's satisfaction prior to the Department disbursing any funds under this Agreement;

- Attachment C identifies additional special conditions particular to your activity or project required by the Department;

- Attachment D identifies additional State laws and regulations that the Contractor must comply with, in addition to the Federal and State laws and regulations identified in the body of the Agreement.

<u>HOME Contractor Is Responsible</u>

Although the HOME contractor may enter into a subcontract with a third party (administrative subcontractor) to perform the "Work" of the Agreement, in whole or in part, the HOME contractor is responsible to ensure that all of the "Work" meets and conforms to all of the terms, requirements, conditions, and special conditions established in the Standard Agreement.

IMPORTANT: If you are a State Recipient or CHDO and are contracting with a third party for certain administrative services, the State Recipient or CHDO, which has entered into the State Standard Agreement with the Department, is ultimately responsible for ensuring compliance with all applicable State and Federal laws, rules, regulations, contractual conditions, and requirements of the HOME Program.

When the Department monitors or audits a Standard Agreement, the State Recipient or CHDO that has entered into that Agreement with the Department will be held accountable for demonstrating that all the HOME funds were expended correctly and that all the records are maintained and held by that entity.

Administrative Subcontractor Requirements

A State Recipient or CHDO that plans to disburse funds to another entity must first execute a written agreement between itself and the recipient. A properly written and executed agreement is a valuable management tool for verifying compliance, monitoring performance, enforcing program requirements, and protecting the HOME investment. The written agreement should be a concise statement of the relationship between the contracting parties, describing the use of the HOME funds and the conditions under which the HOME funds are provided.

Specific contents of agreements will vary, depending upon the role of the particular subcontractor and the type of activities undertaken. At a minimum, however, written agreements must include or identify:

1) Identifying the roles and responsibilities of each party;

2) A full description of the project or program being funded, spelling out the eligible use of funds;

3) Allowable uses of funds, including tasks to be performed, a schedule for completing tasks and a budget in sufficient detail to effectively monitor performance;

4) Whether program income, unexpended funds, or other assets are retained by a State Recipient, how they will be recorded, an identification of the local HOME account for holding these assets, and how and under what circumstances and conditions they can be expended (they must be expended on HOME-eligible activities prior to drawing down any new funds);

5) A requirement that the subcontractor will comply with applicable federal administrative requirements including OMB Circular A-87 and applicable provisions of 24 CFR Part 85 for governmental entities, or OMB Circular A 1-122 and applicable provisions of 24 CFR Part 84 for non-profit entities);

6) Other requirements that must be met, including nondiscrimination and equal opportunity; affirmative marketing and minority outreach; environmental review; displacement, relocation and acquisition; labor standards; and lead-based paint;

7) A requirement that HOME funds cannot be requested until funds are needed for repayment of eligible costs. The amount of each request must be limited to the amount needed, and funds requested may not be retained longer than 15 days from disbursement from the U.S. Treasury;

8) A requirement that certain records must be maintained and an identification of where they will be maintained, and a requirement that certain information and reports must be submitted and their due dates;

9) A means for enforcing the provisions of the written agreement between all parties;

10) A description of all requirements applicable to the type of program or project(s) funded (such as affordability requirements, property standards, rents, homeowner or renter eligibility requirements, and recapture or resale provisions);

11) An identification of all fees, costs or charges an administrative subcontractor receives or may receive as compensation for loan origination, loan processing or loan servicing, including any pass through of loan processing costs;

12) A description of the project or program close-out requirements;

13) A project timetable with performance standards;

14) A warning of the consequences of non-performance;

15) Criteria for the successful completion of the program or project.

16) CHDO record keeping, as applicable.

17) A certification regarding lobbying, as contained in the Standard Agreement.

IMPORTANT: If either the contractor or administrative subcontractor violates or does not meet any of the terms, requirements, conditions, or special conditions of the Standard Agreement, the Department has the right to suspend, modify, or terminate the disbursement of funds under this Agreement and has the right to recapture any disbursed funds.

A. PROJECT COSTS & ADMINISTRATIVE COSTS

It is crucial for HOME contractors to differentiate accurately between project costs and administrative costs, so they can be reimbursed for eligible expenses.

Project Activity Costs include new construction, rehabilitation, on-site improvements, and acquisition. HOME funds may be used for any of the eligible activities described in 24 CFR Section 92.205, and may only be used for those activities described in your Standard Agreement (Std 2.) and its attachments.

Administrative Costs are expenditures made to satisfy conditions of the Standard Agreement and carry out general administration functions. For example, the cost of modifying your rehabilitation guidelines to accommodate HOME Program requirements, completing an environmental review, and salaries for personnel who administer the HOME Program are allowable Administrative Costs. Administrative Costs may also include:

- General management, oversight, and coordination
- Public information
- Fair housing
- Indirect costs
- Compliance with other federal requirements

Administrative Costs may be incurred beginning on the date the Standard Agreement was executed by the State, but may not be drawn down until costs have actually been incurred. See 24 CFR Section 92.207 for a listing of HOME Program eligible administrative costs.

State Recipients may expend up to 2.5% of the total project activity(s) amount for Administrative Costs, and may expend up to 6% or 12% for Activity Delivery Costs, depending on the activity for which the State Recipient submitted an application.

What Are Activity Delivery Costs?

Activity Delivery Costs are that part of Project Related Soft Costs that can be used for staff and overhead costs incurred by the State Recipient or administrative subcontractor that are directly related to carrying out specific HOME projects (see 24 CFR Part 92.206(d)(6) and CPD 96-09 for more on Project Related Soft Costs). Activity Delivery Costs include:

- Affirmative marketing to prospective tenants or owners of a HOME-assisted project
- Preparation of work write-ups, work specifications, and cost estimates
- Project document preparation
- Project underwriting
- Construction inspections and oversight
- Inspections for the presence of lead hazards or defective paint
- Project-specific environmental reviews

- Homebuyer and tenant counseling (if they are HOME-assisted)
- Costs associated with informing tenants or homeowners about relocation rights or benefits.

Starting with the 2000 awards, HOME State Recipients have three different allocated amounts reflected in their Standard Agreement: 1) Project Activity; 2) Activity Delivery Cost for each approved activity; and 3) Administrative Cost. CHDOs have only two different allocated amounts reflected in their Standard Agreement: 1) Project Activity, and 2) CHDO Administrative Funds. Attachment A of your Standard Agreement (Std. 2) lists the specific amounts for each of these types of expenses. State Recipients need to make certain that they charge the appropriate expenses to each category.

How Activity Delivery Costs Differ from Administrative Costs

The 2.5% Administrative Costs can be drawn at any point in the project/program, do not trigger match and are not included in subsidy limit calculations. Administrative costs must be supported with appropriate documentation of expenses.

Activity Delivery Costs are included in the maximum per-unit subsidy limit calculation of the project and trigger HOME Match. They must also be supported with appropriate documentation of expenses. However, Activity Delivery Costs will not be secured or evidenced by a note and deed of trust and do not have to be repaid as do Project Activity funds and Project Related Soft Costs not listed above.

Restrictions on Activity Delivery Costs

- ADCs cannot be used for Tenant-Based Rental Assistance activities;

- If ADCs are spent on a project and the project is not completed (i.e., a Project Completion Report cannot be filed), the ADCs will have to be repaid by the SR.

- ADCs are limited to a proportional amount of project funds drawn. That is, if you request 10% of your Project Activity Costs, you will only be allowed to request 10% of you ADC's.

- Activity Delivery Costs are capped at a maximum of 6% of activity dollars for all project activities except for the Homeowner Rehabilitation and Acquisition and Rehabilitation activities, which are capped at a maximum of 12%.

- The State Recipient or any third or fourth party contractor may not charge any type of fee for loan origination, loan servicing, project monitoring, compliance reviews or any other type of activity.

CHDOs Have All-Inclusive Administrative Funds

CHDOs may expend up to 8.5% of their award for CHDO Operating Expenses. Activity Delivery Costs are included in the 8.5%. A CHDO may not receive Operating Expenses from the HOME Program for any fiscal year in an amount that provides more than 50 percent or $50,000, whichever is greater, of the CHDO's total operating expenses in that fiscal year. (24 CFR Section 92.300(f).)

B. HOME PROGRAM AFFORDABILITY REQUIREMENTS

Funding from the HOME Program, like all federal funds, comes with many strings attached. HOME-assisted housing is held to sales price/value limits and subsidy limits that restrict the amount of HOME funds that can be used for the housing. In addition, housing assisted with HOME funds is required to be affordable to those making 80 percent or less of area median income, through restrictions on the incomes of eligible households and restrictions on rents (low HOME rents and high HOME rents), as well as restrictions on occupancy, including requirements for deeper targeting in rental housing projects. State Recipients and CHDOs are responsible for making sure that these requirements are met.

Determining Income Eligibility for Households Assisted by HOME

HOME regulations require that, for the purpose of determining eligibility for HOME assistance, State Recipients and CHDOs must project a household's income. To determine whether a household is eligible, their income is determined using the Section 8 method.

Annual income includes the gross amount of income of all adult household members anticipated to be received during the coming 12 months. The current employment situation of the family should be used for the anticipated annual income. When determining the household size, the following are not counted as household members: foster children, live-in aides, unborn children and children being pursued for legal custody or adoption who are not currently living in the household. Once the annual household income has been established, it must be compared to the most recent HUD area income limits.

What income should be counted?

Appendix I-B-1 contains a sample form for calculating annual income. The following types of income should be included:

1. All income of all adults, including wages, overtime, commissions, fees, tips, bonuses and other compensation for services before any payroll deductions

2. Child Support, AFDC payments and other benefit payments on behalf of a minor

3. Income of temporarily absent family members

4. The first $480 of a full-time student who is at least 18 years old. However, the $480 limit does not apply if the student is the head of household or the spouse. In those cases, the student's full income is counted.

5. Net income from the operation of a business or profession

6. Interest, dividends, and other income of any kind from real or personal property

7. Full amount of payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits

8. Unemployment, worker's compensation and severance pay

9. Alimony payments and regular contributions or gifts received from organizations or from persons not residing in the home

<u>What income is excluded?</u>

1. Income from children under the age of 18

2. Payments received for foster care

3. Lump sums received as inheritances, insurance payments, capital gains and settlement for personal or property losses, including reimbursement of medical expenses

4. Income from live-in aide

5. Student financial assistance paid directly to the student or educational institution

6. Special pay to a family member serving in the Armed Forces who is exposed to hostile fire

7. Amounts received under training programs funded by HUD and other employment training

8. Earnings in excess of the $480 for a full-time student who is at least 18 years old

9. Adoption assistance payment in excess of $480 per child

10. Deferred periodic payments from SSI and Social Security benefits

11. Refunds or rebates for property taxes, and earned income tax credit

12. Amounts received from a state agency for a member of the family with a disability who is living at home to offset the cost of services

13. Payments received for various Federal Acts, such as Alaskan Native Claims Settlement Act, Grand River Band of Ottawa Indians, etc.

There are no asset limitations for the HOME program, but the actual income from the assets is included as part of the annual income. If this is not possible, contractors should use the HUD passbook rate, which is currently 2%.

How To Verify Income

The two procedures verifying income are:

1. **Third-Party Verification**. Through this method, the contractor contacts outside sources in writing to provide information. The forms for these requests are listed below. Before you can obtain the information from the third-party entity you must have a written release from the household.

   - Verification of Employment
   - Verification of Social Security
   - Verification of Pension and Annuities
   - Verification of Veterans Benefits
   - Verification of Unemployment Benefits
   - Verification of Public Assistance

   A phone conversation with a party listed as employer or public assistance agency does not provide adequate source documentation for the HOME program.

2. **Review documentation provided by the applicants**, including the following:

1. Current 30-day consecutive pay stubs
2. Last three years of Federal tax returns
3. Last two years of W2s
4. Current last two months of bank statements
5. If self employed, last two years of Schedule C of their Federal tax returns and a current profit and loss statement
6. Divorce documents showing child support and alimony received
7. Benefits statements (pension, Social Security, etc.)

It is important when assessing the information to note whether the employee is paid hourly, weekly, or monthly, and note average overtime pay. If an employee gets paid twice a month, that is 24 times per year, whereas if an employee is paid every two weeks, that is 26 times per year. It is also important to determine if overtime is continuous or sporadic.

Purchase Price & Value Limits for HOME-Assisted Housing

Acquisition of single-family dwellings and rehabilitation of owner-occupied single-family dwellings are governed by the Section 203(b) Single-family Home Purchase Price Value Limits, included as Appendix I-B-2. These limit the sales price or value of a home assisted by the HOME Program. For example, if the limit for your county is $170,000, homebuyers assisted by your program can not purchase a house costing more than $170,000. In addition, the after rehabilitation appraised value of all owner-occupied houses which are rehabbed under your program cannot be higher than $170,000. HOME contractors can request an increase in their purchase price/value limits by providing documentation (such as comparables and/or a market study) that actual sales are greatly in excess of the published limit. Contact your HOME representative for more information on this.

HOME Rent Limits

All HOME-assisted rental housing is subject to rent limits designed to ensure their affordability to lower-income households. These maximum rents are issued by HUD and are referred to as HOME rents. They are generally based on Section 8 Fair Market Rents, and are usually adjusted annually (see Appendix I-B-3 for the 2000 HOME rents; the 2001 HOME rents should be released by HUD within the next two months).

There are two HOME rents established for rental projects: High HOME rents and Low HOME rents. For all rental housing, 90 percent of the units must be occupied by households making 60 percent or less of area median income. These households can be charged no more than the High HOME rent. In rental projects with five or more units, 20 percent of the HOME-assisted rental units have to be occupied by households making no more than 50 percent of area median income, who are charged no more than the Low HOME rent.

The following table illustrates these requirements. This example assumes that the project has 10 units, and all 10 units are HOME-assisted.

Unit Number	Maximum Rent	Household Income Limit
1	High HOME Rent	80% of Area Median Income (AMI)
2	High HOME Rent	60% of AMI
3	High HOME Rent	60% of AMI
4	High HOME Rent	60% of AMI
5	High HOME Rent	60% of AMI
6	High HOME Rent	60% of AMI
7	High HOME Rent	60% of AMI
8	High HOME Rent	60% of AMI
9	Low HOME Rent	50% of AMI
10	Low HOME Rent	50% of AMI

Required Period of Affordability

Rental and first-time homebuyer units assisted with HOME funds are required to remain affordable for a designated length of time. The affordability period is dictated by the amount of HOME funds committed to each HOME-assisted unit and the type of housing activity funded. Federal Final Rule Section 92.252(e) addresses the period of affordability for rental units and Section 92.254(a)(4) addresses the period of affordability for homeownership. However, the Department requires a 30-year affordability period for rental projects assisted with HOME funds, and recommends that State Recipients also require this term.

NOTE: These are minimum affordability periods.

C. CALCULATING THE AMOUNT OF HOME ASSISTANCE

The minimum amount of HOME funds is $1,000 times the number of HOME-assisted units. Tenant-Based Rental Assistance is exempt from this minimum limit. HUD establishes and annually updates maximum HOME subsidy limits, called the Section 221(d)(3) limits, for HOME projects. Adjusted by county and the number of bedrooms, the 221(d)(3) limits (included in Appendix I-C-1) represent the maximum amount that a HOME project may receive. To calculate the 221(d)(3) limit for a single-family unit, locate the applicable limit based on the number of bedrooms and county location. To calculate the 221(d)(3) limit for a rental project:

1. Identify the HOME units by bedroom size.
2. Multiply the number of HOME units by bedroom size with the applicable subsidy limit for the county.

For example:

	(A) 221(d)(3) Maximum Subsidy Per Unit	**(B) Number of HOME Assisted Units**	**(C) Total Maximum Subsidy (AxB)**
SRO			
1 Bdrm	80,000	3	240,000
2 Bdrm	100,000	4	400,000
3 Bdrm	110,000	3	330,000
4 Bdrm			
Maximum HOME Investment			**970,000**

HOME can only pay the actual costs of the HOME-assisted housing. If the units are comparable in size, features, and number of bedrooms, then the actual costs of the HOME units can be determined by pro-rating the cost of the HOME units with the total development cost. You should complete this exercise and compare the result with the calculated 221(d)(3) limit.

For example:

	(A) Number of HOME Assisted Units	**(B) Per/unit HOME Square Feet**	**(C) Total HOME Square Feet (AxB)**
SRO			
1 Bdrm	3	700	2100
2 Bdrm	4	1000	4000
3 Bdrm	3	1200	3600
4 Bdrm			
TOTAL			**9,700**

Total Residential Square Feet	19,400
HOME Sq. Ft. Cost Multiplier (HOME residential square feet/total residential square feet)	9,700 / 19,400 = 50%
Total HOME Development Cost (HOME Sq. Ft. cost multiplier x TDC)	50% x $4,000,000 = $2,000,000

The maximum HOME subsidy limit is the lower of either:

221(d)(3) limit	or	Total HOME Development Cost
$970,000		$2,000,000

In this example, the 221(d)(3) limit of $970,000 applies and represents the maximum amount of HOME assistance.

Subsidy Layering Analysis

The HOME Program conducts a subsidy layering analysis of all CHDO projects prior to releasing any funds to ensure that the amount of HOME funds is not more than the amount necessary to provide affordable housing. Likewise, State Recipients are required to conduct a subsidy layering analysis before they commit HOME funds to a project. Appendix I-C-2 includes the required subsidy layering form to be used by State Recipients. The Department will review the subsidy layering analyses conducted by State Recipients for projects they fund, and may reduce the amount of the subsidy based on its evaluation. The HOME funds are required to represent the gap financing in the project. For example, the State Recipient or CHDO should not have a one-size-fits-all loan amount for all of its homebuyers, no matter what their household income and purchase price of the house is.

For first-time homebuyer projects, the HOME contractor must ensure that the HOME loan is only the amount necessary based upon an analysis of each borrower's household income, all other financing, home sales price, and compliance with any loan to value ratio limit(s) adopted by the contractor. For owner-occupied rehabilitation projects, the contractor should also analyze the homeowner's income if the HOME loan requires repayment, and verify that the rehabilitation work is complete, reflects reasonable costs, and meets the applicable local, state, or national building codes.

For rental projects, the contractor should evaluate the aggregate amount of financing (HOME and non-HOME) necessary to ensure the feasibility of the assisted project, long-term needs of the project and its targeted tenant population, reasonable development costs, and reasonable cash flow.

To properly conduct a subsidy layering analysis for a rental project, the contractor should obtain and analyze at least the following information. The items in bold must be submitted to the

Department along with a narrative by the State Recipient describing the results of its subsidy layering analysis.

Sources of funds:

1. Commitment letters with all terms and conditions for all mortgages, grants, subordination agreements, bridge loans, tax credits, investor contributions; and
2. If a partnership, the partnership agreement indicating the general and limited partner contributions.

Uses of funds:

1. Earnest money agreement, option or closing statement for land/or building(s);
2. Construction cost estimate;
3. Construction contract or bids;
4. Regulatory or loan agreements governing project operations and reserves;
5. Appraisal substantiating the value of the land and property after rehabilitation or construction;
6. Rent schedule;
7. Operating budget;
8. Multi-year pro forma for the period of HOME affordability;
9. Construction and permanent sources and uses (for tax credit projects, the sources and uses should show the proceeds from the sale of credits as a funding source and the syndication costs like legal, accounting, tax opinions, etc);
10. Preliminary title report; and
11. Market analysis showing the comparables for the project rents, vacancy rates, and operating expenses to other subsidized and market rate rental projects; and
12. Additional documentation required by Attachment B of the Standard Agreement

With this information, the HOME contractor should ask several questions regarding:

Income:

- Do the HOME rents comply with the HOME rent requirements?
- Is the project rule [20% of HOME assisted units planned for occupancy for households with very low incomes (50% of median)] met?
- Is the vacancy rate realistic?
- Are there any unknown sources of revenue?

Operating Budget:

- Is the total operating cost realistic?
- Do property taxes need to be paid?
- Are there any unclear or unusual expenses?
- How are replacement reserve and operating reserves calculated?

Multi-year Pro Forma

- Is the pro forma for the affordability period?
- What are the trending assumptions for income and expenses? Is the operating reserve trended?

- ❑ Does the debt coverage ratio comply with the HOME requirements?
- ❑ Is there positive cash flow throughout the period of affordability?
- ❑ Is the operating budget consistent with the multi-year pro forma?

Development Budget

- ❑ Is the construction cost reasonable for comparable project types and the same area?
- ❑ What is the % of overhead/profit/general requirements of the total construction cost?
- ❑ What is the % of architectural/engineering services of the total construction costs?
- ❑ What is the % of contingency of the total construction cost?
- ❑ What is the % of the developer's fee of the total development cost (less land)?
- ❑ Are there ineligible HOME costs?
- ❑ Is relocation, lead-based paint, or asbestos mitigation budgeted?
- ❑ Are there enough construction and permanent sources to pay development costs?
- ❑ Are the permanent loans for at least the term of affordability?

Safe Harbors

The following "safe harbors" are ranges for various factors. If the contractor deviates from these safe harbors, the Department will request additional information or explanation from the contractor. Where appropriate, mandatory requirements are also listed:

Factor	**"Safe Harbor" or Requirement (in bold)**
Vacancy Rate	5%
Total Operating Cost Per Unit Per Month	$200-$300
Management Fee Per Unit Per Month	$40, or 5-7% of gross rental income
Replacement Reserve	0.6% of unit construction cost
Operating Reserve	3% of operating expenses
Multi-Family Pro-Forma Trending Assumptions	3% for income; 4% for expenses
Debt Coverage Ratio	**No more than 1.15 (mandatory)**
General Contractor Overhead/Profit/General Requirements	10-14% of construction costs
Architect and Engineering	3-7% of construction costs
Contingency	5-10% of construction costs
Developer's Fee	Not to 10% of Total Development Costs excluding land

If the subsidy layering analysis indicates there is excess subsidy to a project, the Department may do any or all of the following:

- ➢ reduce the amount of the HOME allocation;
- ➢ require additional financing;
- ➢ require reduced rents; or
- ➢ require additional affordable units.

Also, the contractor should document to the Department the amount of governmental assistance, anticipated governmental assistance, and how the following key evaluation points are addressed in the HOME project:

Key Evaluation Points for HOME Projects

- Total proposed funding (public and private) does not exceed the total activity costs for the project or program
- Proposed activity costs are customary and reasonable according to industry standards
- Projected rates of return are reasonable and applicants are not receiving excess profit or windfalls

D. PROJECT SET-UP

Project set-up is the process of reserving funds for individual projects that will be assisted with HOME Program funds. Prior to setting up projects and requesting funds the following must be done:

1) The Standard Agreement (Std.2) must be executed by the HOME contractor and the State of California;

2) All activities that have conditional approval listed in the Standard Agreement (Attachment B, Special Conditions) must be cleared and evidence of the clearance must be received and approved by the Department. (Refer to the executed Standard Agreement and its attachments.)

How To Set Up a Contract

1. To set up the contract (and, subsequently, projects) in the Federal Integrated Disbursement and Information System (IDIS), the Department must have the contractor's Federal Tax ID Number. To make payments to the contractor, the Department must have a completed Std. 204 Vendor Data Record (Appendix I-D-2). To satisfy both of these requirements, submit a completed Std. 204 to the Department prior to requesting set up of any projects.

   Contractors who have previously done business with the Department who do not wish to change the address to which their HOME warrants are being mailed, do not need to submit a Std. 204. In this case, you only need to submit a new Std. 204 if you wish to change the address to which your HOME warrants will be mailed.

2. To set up projects, submit to the Department:

   A completed HUD-required Project Set-Up Report: (HUD-40094) or (HUD-40095).
   For copies of these forms, see Appendix I-D-3 and Appendix I-D-4.

   You may submit a draw request along with your Project Set-Up Report. Draw requests will be discussed in the next section.

   a. A completed Department-required Project Funding Source Detail Form (HOME-3). See Appendix I-D-5 for a copy of the form.

   b. After the project is set up by the Department, a copy of the Project Set-Up Sheet indicating when your project was set up will be mailed to you. Please review this sheet to ensure the project was set up correctly.

3. If you need to increase or decrease the amount of HOME or other funding sources for a project, you must revise the project set-up. To revise previously set up projects, submit to the Department:

   a. A completed HUD-required Project Set-Up Report (HUD-40095 or HUD-40094). Check the box on this form indicating that it is a revision.

   b. A completed Department-required Project Funding Source Detail Form (HOME-3). Check the box on this form indicating that it is a revision.

   c. After the Department revises the project set-up, a copy of the Revised Project Set-Up Sheet indicating when your project set-up was revised will be mailed to you. Please review this sheet to ensure the project was revised correctly.

E. SHOW ME THE MONEY! (or How to Draw Down Funds from HOME)

HOME funds can only be requested for previously set up projects.

Administrative Fund Disbursement

To request administrative funds and report on other funds being expended for administrative costs, submit a completed Department-required Administrative Drawdown Request Form (HOME-4, included as Appendix I-E-2). Use the correct two-digit funding source code as shown on the back of the HOME-4 Administrative Costs, which is “06 - HOME Administrative Funds.”

1) State Recipients should make certain that Activity Delivery Costs/Project Related Soft Costs are not charged to Administrative Costs (explained in an earlier section). Requests for Activity Delivery Cost reimbursement must include the Project Drawdown Request form (HOME-5). State Recipient Administrative Costs are a maximum of 2.5%.

2) CHDOs may expend up to 8.5% of their award for CHDO administration. This includes Activity Delivery Costs.

Activity Delivery Costs and Other Project Related Soft Costs Disbursement

State Recipients’ Activity Delivery Costs are capped at 6% for all project activities except for the Homeowner Rehabilitation and Acquisition and Rehabilitation activities, which is capped at 12%. Activity Delivery costs should be requested proportionally to project costs. For example, if 30 percent of the project costs that were set up are being requested, then no more than 30 percent of the Activity Delivery Costs for that project may be requested.

To request Activity Delivery Costs and Other Project Related Soft Costs submit a completed Department-required Project Drawdown Request form (HOME-5). Use the correct two-digit funding source code as shown on the back of the HOME-5, which is:

11 – HOME Funds - Activity Delivery Costs
12 – HOME Funds - Other Project Related Soft Costs

Project Activity Costs Disbursement

Project Activity Costs include new construction, rehabilitation, on-site improvements, and acquisition. HOME funds may be used for any of the eligible activities described in 24 CFR Section 92.205, and may only be used for those activities described in your Standard Agreement (Std 2.) and its attachments.

To request Project funds and report on other funds being expended for project costs, submit a completed Department-required Project Drawdown Request Form (HOME-5, included as Appendix I-E-3).

For the final draw, also submit a revised Project Funding Source Detail Form (HOME-3) (Appendix I-D-5) that reflects any changes to the funding sources and/or amounts that have changed since the project was set up.

HOME Program funds requested on all HOME-4 Forms and HOME-5 Forms must be rounded to whole dollar increments (no cents), and normally should not be submitted for less than $100.00 unless the funds remaining are less than $100.00.

Important! Signature Authority Is Needed!

HOME draws cannot be processed unless the Department has received a resolution or a letter from the contractor designating a specific title and/or person to sign their submitted HOME draws. The resolution or letter must meet the following requirements:

1) The letter should be an original;

2) The person(s) signing either the Administrative Drawdown (ADR) or Project Drawdown (PDR) forms must be specifically authorized to sign those types of documents on behalf of the Contractor;

3) Proof of such authorization must be submitted to the Department prior to or concurrently with the Contractor's initial ADR or PDR.

4) We encourage contractors to designate an authorized signer by title rather than by name and title. This way if a specific person leaves a job and another person is in that position, they are able to sign for draws without submitting another signature authority letter. However, some contractors wish to maintain tighter controls and may submit a signature authority letter with both a name and a title.

State warrants will be made payable to the Contractor (State Recipient/ CHDO).

Other Disbursement Requirements

- **Designated Payee**: The Contractor may request that a warrant or all warrants be made payable to a "designated payee." The Contractor must submit evidence of this authorization by letter, on the Contractor's letterhead, which contains the original signature of the Contractor's authorized signatory. If the designated payee is not a unit of general local government, a Vendor Data Record form (STD. 204) (Appendix I-D-2) is required to be filed with the Department prior to the issuance of any warrants to that particular designated payee. More than one designated payee authorization may be on file with the Department at the same time for the same Standard Agreement, so be sure to specify to which designated payee each warrant should be made payable. A **sample**

letter requesting warrants to be made payable to a designated payee is included as Appendix I-E-1.

- **IRS Reporting Burden**: The IRS requires the reporting of all monies that are lent. For this reason, the burden of reporting to the IRS must remain with the unit of local government that is the recipient of the HOME Program allocation. A unit of local government may use a Designated Payee, but it is the local government's responsibility to report these loans yearly to the IRS.

<u>The Process for Disbursing Funds</u>

1) The Department receives the Contractor's Administrative Drawdown Request (HOME-4) or Project Drawdown Request (HOME-5). It is approved by the HOME Program Representative, and processed by the HOME Program Fiscal Unit staff.

2) A request is forwarded to the Department's Accounting Branch staff, who electronically authorize a HOME Program Payment Certification Voucher (form HUD-40099) via IDIS, and begin processing a request for the issuance of a State warrant.

3) The federal Integrated Disbursement and Information System (IDIS) wires the funds to the State Treasury within 48 to 72 hours from the time the HOME Program Payment Certification Voucher was processed in IDIS.

4) The State Controller's Office (SCO) or the Department mails the State warrant to the Contractor, usually within five working days from the day the voucher was processed in IDIS.

This process takes approximately 3 or 4 weeks.

The 15-Day Clock: It is the responsibility of the Contractor to ensure that HOME funds are expended and paid out of the Contractor's local account within 15 days from the date that the funds were wired from the Federal Treasury. The wire date appears on the Remittance Advice that is attached to the State warrant; it is not the date of the check. Any funds that are not expended on eligible costs and are not disbursed from the Contractor's local account within the 15 days must be returned to the Department, for return to HUD. Please return the funds in the form of a check and a letter of explanation to the address listed below:

State of California
Department of Housing & Community Development
Administration & Management Division
Accounting Office Branch, Cashier
P.O. Box 952050
Sacramento, CA 94252-2050

Include in the body of the letter:

- The Standard Agreement number
- Either the old CMI project number or the new IDIS activity number
- A brief explanation of why the funds are being returned

Also submit to the Department **a copy** of both the letter and the check to the address below **(do not mail checks to the address below)**:

State of California
Department of Housing & Community Development
Division of Community Affairs
P.O. Box 952054, MS 390-4
Sacramento, CA 94252-2054
Attn: HOME Program Fiscal Unit

Because the Return of Funds process can take several months to complete, contractors are cautioned to only request funds in amounts that can safely be expended within the 15-day clock. Contact your HOME Program Representative for assistance resolving problems that involve return of funds.

How To Return Unused Funds

Unused HOME Program funds and any interest earned on any unused HOME Program funds is required by federal regulations 24 CFR Sections 92.502(c)(2) and (3) and the State Regulations Section 8215(c)(2) to be returned to the Department for return to HUD. Please return the funds in the form of a check and a letter of explanation to the address listed below:

State of California
Department of Housing & Community Development
Administration & Management Division
Accounting Office Branch, Cashier
P.O. Box 952050
Sacramento, CA 94252-2050

Include in the body of the letter

- The Standard Agreement number
- Either the old CMI project number or the new IDIS activity number
- A brief explanation of why the funds are being returned

Also submit to the Department **a copy** of both the letter and the check to the address below **(do not mail checks to the address below)**:

State of California
Department of Housing & Community Development
Division of Community Affairs
P.O. Box 952054, MS 390-4
Sacramento, CA 94252-2054
ATTN: HOME Program Fiscal Unit

F. EXPENDITURE MILESTONES FOR PROGRAMS; DEADLINES FOR PROJECTS

HOME funds must be spent expeditiously due to deadlines imposed by HUD, which the Department in turn imposes on HOME contractors. These deadlines have been amended in the past year, and differ depending on whether a program or a project was funded.

Program Expenditure Milestones

The program milestones are as follows:

- 25 percent of the activity dollars (defined as the non-administrative portion of the award) must be expended within 15 months of the date of the award letter. For example, awards were made Jan. 31, 2001, so the first milestone will be April 30, 2002;

- 45 percent of the activity dollars must be expended within 21 months of the date of the award letter;

- 65 percent of the activity dollars must be expended within 27 months of the date of the award letter;

- 85 percent of the activity dollars must be expended within 33 months of the date of the award letter; and

- 95 percent of the activity dollars must be expended within 39 months of the date of the award letter. This 39-month deadline is also known as the final expenditure deadline, beyond which funds may not be drawn down, unless it can be demonstrated that the costs were incurred prior to the final expenditure deadline.

Recent regulatory amendments allow the HOME Program to extend these milestones if unexecuted contracts are not mailed to contractors within 90 days of the date of the award letter.

The **penalties for missing these milestones** are as follows:

- If one expenditure milestone is missed, there is no penalty;

- If any two consecutive milestones are missed, the contractor loses all performance points on the next application for funds;

- If any three milestones are missed, the contractor will be “held out” in the next funding cycle, i.e., not allowed to apply for funds, and will lose all performance points the next time a funding application is submitted.

Exceptions to these penalties:

- If a contractor discovers that it will not be able to successfully market the program due to changing economic circumstances, such as documented skyrocketing home prices, the contractor can voluntarily disencumber the remaining portion of the award within 12 months of the date of the award letter, and will not be penalized for doing so;
- If a contractor misses the first two milestones and realizes that it will miss the third one also, it can voluntarily disencumber the remaining portion of the award within 23 months of the date of the award letter, and will not be held out from the next NOFA competition.

Project Deadlines

Project deadlines are as follows:

- Permanent financing must be committed within 12 months of the date of the award letter, or within 17 months for projects proposing tax credits;
- Projects must be set up in the federal Integrated Disbursement Information System within 18 months of the date of the award letter;
- Construction loan closing must occur within 24 months of the date of the award letter, except for self-help construction projects, for which construction loan closing must take place within 30 months;
- Final expenditure deadline for projects is 42 months from the date of the award letter.

The penalty for missing any of these deadlines is disencumbrance of the HOME award.

Rewards for Programs and Projects

In the 2000 NOFA competition, the HOME Program funding allocation was substantially greater than it has been in a typical year. For this reason, the HOME Program permitted contractors who had met their expenditure milestones and/or their project deadlines to apply for a larger amount of funds than was permitted for contractors who had not met their deadlines. Depending on future allocations, the Program may continue this practice in the future funding rounds.

G. PERFORMANCE REPORTING

Contractors are required to reporting to the Department quarterly and annually on the progress of their HOME-funded activities. Filing the required quarterly and annual performance reports is a factor in awarding points for performance for successive applications.

Quarterly Performance Reports

Contractors must submit to the Department a performance report on Form HOME-2, Quarterly Performance Report (Appendix I-G-1 no later than 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31) until the project completion report is accepted in IDIS. The Department will not process payment requests submitted by Contractors who have not submitted their Quarterly Performance Reports.

The Quarterly Performance Report form contains the following:

- A Narrative Summary section asking for: a description of activities undertaken and completed during the last calendar quarter; a description of planned activities for the next quarter, a discussion of any complaints received; a description of any problems that have arisen that may impact fulfilling any contract obligation; and data on the use of HOME Program Income.

- A Financial Summary section asking for: allocation, drawdown, balance and percentage information; match amounts; administrative allocation and expenditure data; and accounting regarding Program Income.

- Signature, Title and Date: The person submitting the quarterly report should provide his/her title, then sign and date the form.

Annual Performance Reports

Annual performance reporting forms are mailed out by the Department in June and must be returned to the Department by July 31. The report is to be submitted annually until the expiration of the affordability period. The Annual Performance Report forms are revised each May to meet current HUD reporting requirements. However, the current forms and instructions are in Appendix I-G-2 HOME-7 Annual Progress Report.

The Annual Progress Report consists of the following:

1. Participant Information

2. Program Income

3. Minority Business Enterprise/Women's Business Enterprise Report

4. Section 3 Report

5. Relocation and Real Property Acquisition Report

6. Match Report Log

7. HOME Match Report

8. Summary of Households Assisted

H. PROJECT COMPLETION REPORTS

Project completion is the conclusion of the fiscal process for individual projects that have been fully disbursed.

Program Policy

- Within 60 days of receipt of the final draw requested for a project, the HOME Contractor is required to submit a Project Completion Report form to the Department as required by 24 CFR Section 92.502(d).

- If the Contractor does not submit a project completion report within the 60 days, the Department may suspend further project set-ups or disbursements until a Project Completion Report is received by the Department and processed in IDIS.

- Although the federal rules require that a Project Completion Report be submitted to HUD within 120 days of the final drawdown request, the State HOME Program regulations require the report to be submitted within 60 days.

- The federal Integrated Disbursement and Information System (IDIS) may suspend further project set-ups and disbursements to agencies that have not submitted a project completion report within 120 days of receipt of the final draw request.

- If a multiple-unit project is not fully occupied by the date the completion report is due, a completion report should be submitted with all information available at the time. An amended report should be filed when the remainder of the occupancy data is known. Vacant units do not count toward the income targeting requirements of rental projects. Participants who do not file an amended report on vacant rental units may fail to meet occupancy requirements and could incur a monitoring and/or audit finding.

- Because a project's final draw will trigger the need to submit a Project Completion Report, you should not request a final drawdown until it is reasonable to expect that a project can be completely occupied. Under certain circumstances, you may leave $100.00 remaining in the project account for future drawdown once the project is completely occupied. Contact your State HOME Program Representative for more information about when to leave a small un-disbursed balance in a project.

- Project Completion Reports are not required for tenant-based rental assistance projects. A final draw request will complete the fiscal process for this type of project.

Procedures

To complete a project, submit a completed HUD-Required Project Completion Report to the Department. Use the most appropriate of the following forms:

- Homeownership Assistance Project Completion Report, Form HUD-40096 (**Appendix I-H-1)**
- Multiple-unit Homeownership Assistance Project Completion Report, Form HUD-40096-M (**Appendix I-H-2**)
- Rental Housing Project Completion Report, Form HUD-40097 (**Appendix I-H-3**)

If your project was set up in the old federal Cash Management Information (CMI) system (prior to 11/9/99) do the following:

a. Write the State Standard Agreement number, including the two-digit Project Suffix of the project completed in the upper right-hand corner of the form (e.g. 98-HOME-0234-01). This number can be found on either the original submission of the HUD Project Set-Up form or the HCD New Project Set-Up Sheet (in the Notes: field).

b. Enter the CMI system generated 10-digit number in Part A, Box 1 (e.g. 1234567890). This number can be found in Part A, Box 1 of the Original HUD Set-Up Form or the New Project Set-Up Sheet (in the Project No. Field).

If your Project was set up in IDIS (after 11/9/99) do the following:

a. Write the Grantee Activity Number in the upper right-hand corner of the form (e.g. M980234-01). This number can be found on the New Project Set-Up Sheet (in the Project No. Field).

b. Enter the HUD Activity Number in Part A. Box 1 of the HUD Set-Up Report (e.g. 5236). This number can be found on the New Project Set-Up Sheet (in the Notes: field).

For all types of projects, regardless of when they were originally set up, the Contractor must also submit a completed Department-required Addendum to Project Completion Report (HOME-6) (Appendix I-H-4). This form should accompany the HUD Project Completion Form.

a. Be sure to use the most current version of the HOME-6 as the funding source codes may have changed.

b. The HUD Activity Number (e.g. 5236) can be found on the New Project Set-Up Sheet (in the Notes: field).

c. The Grantee Activity (e.g. M980234-01) can be found on the New Project Set-Up Sheet (in the Project No. Field).

d. For projects that were set up prior to the IDIS conversion on November 9, 1999, enter the old 10-digit CMI Project Number in the Grantee Activity Number field on the HOME-6 form. This number can be found in Part A, Box 1 of the Original HUD Set-Up Form or the New Project Set-Up Sheet (in the Project No. Field).

I. WHAT IS PROGRAM INCOME?

Program income is the repayment of principal (once the affordability period has ended) and interest from the original HOME investment, including the following:

- amortized principal payments;
- interest payments;
- proceeds from equity-sharing arrangements;
- lump sum payments from the sale or refinancing of the housing unit; and
- proceeds from foreclosure if the property is no longer used for eligible HOME purposes.

Up to 10% of the program income may be used for eligible administrative and planning costs if derived from the following sources:

- the interest portion of repayments
- the principal portion of repayments **only if** the period of affordability has expired
- the State Recipient's share of equity in excess of the original HOME loan amount

Program income generated by housing that is only partially assisted with HOME funds or matching funds shall be pro-rated to reflect the percentage of HOME funds or match used.

How Is Program Income Different from Recaptured Funds?

Recaptured funds are HOME funds recouped when HOME-assisted housing does not fulfill the requirements for the full affordability period required by 24 CFR 92.254(a)(4). For example, if a homeowner assisted through a first-time buyer program sells his home prior to the end of the affordability period, the repayment of the HOME loan is considered recaptured funds. Any amount recaptured must be used for HOME projects in accordance with all HOME rules.

Since recaptured funds are a return of the original HOME investment, they are not considered to be program income. Therefore, unlike program income, 10% of recaptured funds may not be used for eligible administrative and planning costs.

Important: Don't Miss Your Milestones due to Program Income

All program income must be disbursed for other eligible HOME expenses before additional HOME funds may be drawn down from the U.S. Treasury. Available program income must be used to pay the next eligible program cost (or portion thereof).

However, State Recipients may elect to return program income to the Department, a move some State Recipients may want to consider if the required program income expenditure means that they will miss one or more of their expenditure milestones for a program they are administering. Expenditure milestones are discussed in Section F of this chapter. Please note that a revised

Project Funding Source Detail form is required when program income is spent on a project in place of HOME Program Funds.

When Are Program Income/Recaptured Funds Considered Disbursed?

Program Income/Recaptured Funds are considered disbursed **ONLY** in two cases:

- when the "check is cashed," i.e. when the ultimate payee cashes the check; or
- when funds are deposited in escrow for an imminent transaction.

Funds are NOT considered disbursed in the following scenario:

- when the State Recipient enters into an agreement with any party (administrative subcontractor, subrecipient, developer, borrower) to disburse funds at a later date (i.e. for progress payments, for future pre-development or land acquisition expenses, for loans to be made at a future date).

State Recipients should prepare a monthly statement of available program income and recaptured funds. This statement must be consulted and all funds shown on this report must be disbursed prior to draw down of additional HOME funds.

How Can Program Income Be Used?

Program income can be used for any activity eligible under the HOME program. All HOME program rules and federal overlay requirements apply to assistance provided with program income.

Additional requirements apply if the State Recipient actually owns the HOME assisted property.

Who Receives Program Income?

In accordance with 24 CFR 92.503(a)(1), HCD may authorize State Recipients to retain program income for additional HOME-eligible activities. Upon expiration of the Standard Agreement, any program income that a State Recipient has on hand, as well as any future program income (accounts receivable) must be returned to HCD, as specified in the Standard Agreement.

CHDO Proceeds

CHDOs are not permitted to retain program income, called CHDO proceeds, at this time. CHDO proceeds, which include interest on HOME loans or proceeds from permanent financing, are similar to program income, but may be used differently.

CHDO proceeds must be deposited in the State's local account, and are redistributed through a subsequent NOFA. However, CHDOs can request to have their proceeds deposited into the local account of a State Recipient who has met the qualifying criteria for retention of program income, instead, so that the proceeds go back to the community in which they were generated. State Recipients who receive proceeds for a CHDO under this provision are required to receive approval from HCD, and must have adopted the Department's Best Quality HOME Servicing Guidelines in order to qualify to receive these proceeds. Best Quality HOME Servicing Guidelines are discussed in the next section.

How To Manage Program Income

The Department recommends that State Recipients that retain their own program income also follow the Department's Best Quality HOME Servicing (BQHS) Guidelines to assure that they successfully manage their program income. State Recipients who receive CHDO proceeds are required to adopt these guidelines, as discussed above. Copies of the guidelines are available upon request from your HOME representative.

BQHS guidelines stipulate that State Recipients must adopt written policies and procedures to administer program income, and should have adequate staff, separation of duties, systems, etc. These procedures should accomplish the following:

1. Account for HOME funds separately from any other funding sources (no co-mingling of funds) through use of a tracking system and reporting

2. Disburse program income prior to submitting a draw down to the Department;

3. Provide a written reallocation and reuse process that:

    a. Distinguishes between program income and recaptured funds
    b. Ensures appropriate reuse of funds
    c. Provides for timely processing

4. Accounts for administrative funds (up to 10% of program income) through fiscal accounting and a separate tracking system to ensure administration funds are used for eligible activities;

5. Return program income to the Department after the Standard Agreement expires.

Program Income Reporting

State Recipients are required to report annually, as part of their annual performance report (discussed in Section G of this chapter), on their program income balances and recaptured funds, how much they received during the year, how much they expended for HOME-eligible activities and HOME-eligible administrative expenses, and how many households they assisted through their expenditures.

J. REQUIRED RECORDKEEPING AND FILES

Fiscal Records

Contractors must maintain an accurate and complete set of accounting records for all financial transactions. They must also maintain supporting documents, statistical records, and all other records pertinent to the HOME Program Standard Agreement until all loans made under the HOME Program Standard Agreement have been repaid, or for a period of five years after the Project Completion Report is received by the Department, and forwarded and accepted by IDIS, whichever occurs later. A table of recordkeeping requirements by type of activity is included in Appendix I-J-1.

Records and files shall include, at a minimum, the following:

1. HOME Program Application (HOME-1)

2. Executed Standard Agreement and any amendments thereto

3. Correspondence to the Department describing steps taken to satisfy Standard Agreement condition(s) and supporting documentation

4. Correspondence from the Department accepting compliance with the Standard Agreement condition(s)

5. Environmental review documentation

6. HOME Program Activity Budgets

7. HOME Program Project Set-up Reports and accompanying Project Funding Source Detail Forms (HOME-3)

8. Administrative Drawdown Request Forms (HOME-4)

9. Project Drawdown Request Forms (HOME-5) submitted to HCD, and Payment Certifications received from HCD for each drawdown

10. Fiscal records that identify the specific use of HOME Program funds by contract, activity, cost category and project, by month

11. Invoices, timesheets, and other source documentation of expenditures charged to the HOME Program Standard Agreement

12. Documentation of expenditures made by the other funding sources such as CDBG, redevelopment set-aside funds, local general fund, private financial institutions, other State funds, and matching funds

13. Records documenting the acquisition and disposition of all personal property purchased with HOME Program funds

14. Approved "Indirect Cost Rate Plan," if charging indirect costs to general administration

15. Bank statements

Other Recordkeeping Requirements

The exceptions to the five-year recordkeeping requirements are as follows:

- **Rental housing:**
  - General records must be kept five years after project completion; and
  - Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period ends.
- **Homeownership:**
  - Homeownership records must be kept for five years after project completion; and
  - For resale / recapture records, five years after the affordability period ends
- **TBRA:** Records must be kept for five years after rental assistance ends.
- **Written Agreements:** Generally, all written agreements must be maintained for five years after the agreement ends.
- **Displacement and Acquisition:** Records must be kept for five years after final payment to displaced persons.
- **If any litigation, claim, negotiation, audit, monitoring, inspection or other action** has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

K. CLOSE-OUT MONITORING REQUIREMENTS

Monitoring in the HOME Program is designed to review HOME contractors' overall performance and adherence to program requirements and to provide technical assistance, as well as determining whether or not housing and housing-related services are being delivered in accordance with HOME requirements.

The principal HOME requirements are that HOME funds be used to provide housing and housing-related services for low- and very low-income residents; that any housing produced with HOME funds meets quality standards and is decent, safe, and sanitary; and that the housing opportunities created with HOME funds be available and affordable for a specific period of time.

There are several basic elements to any monitoring visit:

1) The HOME Program representative will call to schedule approximately two or three days for the visit.

2) A pre-monitoring letter to confirm the monitoring dates will be sent at least two weeks prior to arrival. The letter will detail the contract number, the activity, the HOME Program representatives who will conduct the interview, and a listing of the areas to be reviewed and documented, as follows:

    - Examination of program guidelines and procedures, program administration, and individual project review, based on the specific activity, as listed below:

        - Owner-Occupied Rehab,
        - First-Time Home Buyer,
        - Rental Acquisition, Rehab or New Construction, and
        - Tenant-Based Rental Assistance

    - Determination whether Standard Agreement provisions and conditions have been met (including match, leverage, and other special conditions);

    - Verification of whether the program's or project's costs were eligible and allowable, including a review of the use of HOME funds, whether activities were eligible, administrative costs, staff costs, time sheets;

    - Verification of whether the contractor is correctly calculating income to determine if households are low-income or very low-income as required by the HOME program;

    - Examination of the required subsidy layering analysis to verify that State Recipients and CHDOs have not invested more of HOME Program funds, in combination with other governmental assistance, than is necessary in any one project to provide affordable housing;

- Verification of the program or project's compliance with the following Federal overlay requirements:

    - Fair Housing, Equal Opportunity, and Affirmative Marketing
    - Environmental Review
    - Flood Insurance (if applicable
    - Labor Standards (if applicable)
    - Lead-based Paint (if applicable)
    - Procurement
    - Relocation (if applicable)

3) Upon arrival, the HOME representatives will conduct an entrance interview to make sure that the staff persons providing assistance have a clear understanding of the purpose, scope and schedule for the monitoring.

4) HOME representatives will keep a detailed record of information reviewed and conversations held with staff during the monitoring visit. The information will be documented on checklists based on the HOME Program requirements for each type of program or project. The information gathered will serve as a basis for conclusions to be included in the monitoring report and follow-up letter.

5) At the conclusion of the monitoring, HOME representatives will meet again with key staff persons to:

    - Present preliminary results of the monitoring,

    - Provide an opportunity to correct any misconceptions or misunderstandings,

    - Secure additional information to clarify or support their position, and

    - If applicable, provide an opportunity to report on steps the organization may already be taking to address areas of noncompliance or nonperformance

6) Within 30 days of the monitoring visit, the HOME monitoring staff will send a follow-up letter containing formal notification of the results of the monitoring. The letter will recognize contractors' successes, outline any findings and concerns, and set deadlines for a written response and corrective actions.

    - A "finding" is a deficiency in program or project performance, a statutory or regulatory requirement that was not met. Sanctions or other corrective actions are authorized in these cases;

    - A "concern" relates to program or project performance that should be improved before it leads to a finding;

- A written response must be submitted to your HOME Program representative within 30 days of receiving your HOME monitoring follow-up letter.

7) Once all the corrective actions have been completed, the HOME monitoring staff will send a letter stating that the monitoring "findings" have been closed.

L. LONG-TERM MONITORING REQUIREMENTS

There is a significant difference between State Recipient and CHDO responsibilities in long-term monitoring, which is monitoring during rental projects' affordability period. The difference is based upon the following:

STATE RECIPIENTS: State Recipients are responsible to the Department for the long-term monitoring of rental projects for the entire period of affordability. The Department, as a participating jurisdiction, is in turn responsible to HUD to ensure that State Recipients are monitoring appropriately for continued compliance with federal regulation requirements.

CHDOs: During the required period of affordability, the Department is directly responsible to HUD for the on-site monitoring of CHDO rental projects and CHDO project data and reports to ensure continued compliance.

State Recipient HOME-Assisted Rental Projects

The Department will monitor the State Recipient's long-term monitoring processes to ensure continued compliance with federal regulations regarding income determinations of households assisted [92.203]; rents [92.252]; affirmative marketing/fair housing [92.351 and 24 CFR 1.4, 24 CFR 200, and 24 CFR 207.30]; lead-based paint [92.355]; and property standards [92.251]. Additionally, the State Recipient is responsible for conducting on-site property standards inspections according to the schedule contained in 92.504 (d)(1).

During the affordability period, the Department will conduct periodic on-site reviews of the State Recipient's monitoring data and reports and on-site physical inspection of project(s) to verify:

1. **Continued income eligibility**: The State Recipient must maintain data and reports confirming that the owner, or its management agent, annually re-certifies the income of each tenant household living in HOME-assisted low-income units, and that the tenancy still meets the HOME income requirements.

2. **Continued occupancy eligibility**: For projects with five or more units, a minimum of 20% of HOME-assisted units must continue to be occupied by very low-income households paying low HOME rents for the term of affordability, in accordance with the income limits published annually by HUD.

3. **Maximum monthly rents of HOME-assisted units** must be verified annually. Rents may not exceed low and high HOME rent limits as published annually by HUD. HOME rents include tenant utility allowance.

4. For rental projects with five or more housing units, the State Recipient must assess whether the project has been **marketed affirmatively**, and ascertain that no discrimination has occurred.

5. The State Recipient must perform on-site monitoring to determine compliance with **lead-based paint requirements and property standards** in accordance with the following minimum schedule:

# of HOME-assisted units	**Schedule**
1 – 4 units	3 years
5 – 25 units	2 years
26+ units	1 year

Tenant-Based Rental Assistance (TBRA) Rental Projects

The State Recipient is responsible for annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to ensure compliance with the property standards of 92.251.

The Department will monitor the State Recipient based on a sampling of the State Recipient TBRA programs.

CHDO HOME-Assisted Rental Projects

The Department will monitor the CHDO to ensure continued compliance with federal regulations regarding income determinations of households assisted [92.203]; rents [92.252]; affirmative marketing/fair housing [92.351 and 24 CFR 1.4, 24 CFR 200, and 24 CFR 207.30]; lead-based paint [92.355]; and property standards [92.251].

In addition, monitoring will include the HOME Regulatory Agreement requirements regarding use of the operating and replacement reserves; continuance of hazard and liability insurance; submission of proposed operating budget sixty days prior to the beginning of the project's fiscal year; submission of annual reports sixty days after the end of the project's fiscal year; provisions regarding sponsor distributions, debt service payments, and other requirements.

Annual monitoring of project rents and tenant incomes will be accomplished by the Department through review of the Annual Report's Occupancy and Rent Schedule-HOME-184, prepared by the CHDO for each rental project.

During the period of affordability, the Department will conduct on-site monitoring visits, in accordance with 92.504 (d)(1). The minimum schedule is:

# of HOME-assisted units	**Schedule**
1 – 4 units	3 years
5 – 25 units	2 years
26+ units	1 year

During the on-site visit, the Department will monitor to ensure continued compliance with the following federal requirements:

1. **Continued income eligibility**--The CHDO must maintain data and reports confirming that the CHDO, or its management agent, annually re-certifies the income of each tenant household living in HOME-assisted units. (The on-site monitoring will provide staff the opportunity to verify that the data submitted in the Annual Report's Occupancy and Rent Schedule-HOME-184 is accurate.)

2. **Continued occupancy eligibility—**On-site monitoring will give the HOME monitoring staff the opportunity to verify data submitted in the Annual Report,'s Occupancy and Rent Schedule-HOME-184. For rental projects with five or more units, a minimum of 20% of HOME-assisted units must continue to be occupied by very low-income households in accordance with the income limits published annually by HUD.

3. **Maximum monthly rents of HOME-assisted units** must be verified annually by the CHDO or its agent. Rents may not exceed low and high HOME rent limits as published annually by HUD (limits include tenant utility allowance).

4. For projects with five or more housing units, the Department will **assess the affirmative marketing program for the project** to determine the success of affirmative marketing actions and to prescribe any necessary corrective actions.

5. Depending on the number of HOME-assisted units in the project, the Department will conduct on-site project monitoring every one, two or three years to verify compliance with affirmative marketing, **lead-based paint, and property standards** requirements.

General Information

Monitoring in the HOME Program is designed to review the State Recipient and CHDO's overall performance and adherence to program requirements and to provide technical assistance, as well.

Despite the differences between the long-term monitoring processes of State Recipient and CHDO projects, there are several common basic elements to each monitoring visit:

1. The HOME Program representative will call to schedule approximately two or three days for the visit.

2. A pre-monitoring letter to confirm the monitoring dates will be sent at least two weeks prior to arrival. The letter will detail the contract number, the activity, the HOME

Program representatives who will conduct the interview, and the areas to be reviewed and documented on checklists.

3. Upon arrival, the HOME representatives will conduct an entrance interview to make sure that the staff persons providing assistance have a clear understanding of the purpose, scope and schedule for the monitoring.

4) HOME representatives will keep a detailed record of information reviewed and conversations held with staff during the monitoring visit. The information will be documented on checklists based on the HOME Program requirements for each type of program or project. The information gathered will serve as a basis for conclusions to be included in the monitoring report and follow-up letter.

5) At the conclusion of the monitoring, HOME representatives will meet again with key staff persons to:

   - Present preliminary results of the monitoring,
   - Provide an opportunity to correct any misconceptions or misunderstandings,
   - Secure additional information to clarify or support their position, and
   - If applicable, provide an opportunity to report on steps the organization may already be taking to address areas of noncompliance or nonperformance

6) Within 30 days of the monitoring visit, the HOME monitoring staff will send a follow-up letter containing formal notification of the results of the monitoring. The letter will recognize contractors' successes, outline any findings and concerns, and set deadlines for a written response and corrective actions.

   - A "finding" is a deficiency in program or project performance, a statutory or regulatory requirement that was not met. Sanctions or other corrective actions are authorized in these cases;
   - A "concern" relates to program or project performance that should be improved before it leads to a finding;
   - A written response must be submitted to your HOME Program representative within 30 days of receiving your HOME monitoring follow-up letter.

7) Once all the corrective actions have been completed, the HOME monitoring staff will send a letter stating that the monitoring "findings" have been closed.

M. Special State Recipient Security Document Requirements

All security documents must be executed by the State Recipient prior to disbursement of funds to the project and must contain the applicable affordability requirements set forth in 24 CFR 92.252 and 92.254. If the HOME-assisted housing does not meet the affordability requirements for the specified period, repayment of HOME funds is required. The required security documents are described below:

Promissory Note

The State Recipient is required to ensure that all loans made by them are evidenced by a promissory note secured by a deed of trust to be recorded on the property being assisted, or by other security approved by the State in writing. If the State Recipient is not going to retain loan repayments locally, the State HOME Program must be the beneficiary of the promissory note and deed of trust or other approved security.

Regulatory Agreement

A Regulatory Agreement must be executed in addition to a Promissory Note and Deed of Trust prior to the disbursement of HOME funds for any HOME-funded rental project. The owner is required to fulfill its duties and responsibilities with respect to the operation of the project, according to the terms and conditions of the Regulatory Agreement for the affordability period specified in 24 CFR 92.252(e) regardless of sale, transfer, or prepayment, (except under certain foreclosure circumstances).

The State Recipient must ensure that the Regulatory Agreement, or a memorandum thereof, is recorded as a lien on the project.

N. SPECIAL CHDO REQUIREMENTS

State Regulations regarding CHDOs were amended in January 2001. The new regulations require the following:

- An application for certification or recertification as a CHDO must be received by HCD no later than 60 days prior to the funding deadline. This means that if an currently certified CHDO's certification will expire prior to the funding deadline, the recertification package must be received by the Department no later than 60 days before the funding deadline in order for it to be processed and for the CHDO to receive a new letter of certification by the funding deadline.

- If a CHDO is affiliated with one or more other CHDOs, only one such affiliate is eligible to submit an application for HOME funds in response to each NOFA.

- New and recertifying CHDOs must have had at least a one year record of providing a housing-related service to the community in which they intend to be certified. A housing-related service is one which provides a benefit to a tenant or homeowner in the community, such as developing new housing, rehabilitating existing stock, managing housing stock, housing counseling, administering a weatherization program, or operating a homeless shelter. Solely engaging in predevelopment activities for a housing project does not constitute a service to the community.

- In order for a currently certified CHDO to be eligible for recertification, the organization must have applied to the State HOME Program at least once in the preceding three years of certification, **or** must have been active in the housing field, meaning the CHDO must have developed, owned or sponsored housing of any kind, using any funding source, in the preceding three year period. CHDOs serving a county in which there is no other State-certified CHDO are permitted a six year period in which to either apply to the State HOME Program or develop, own or sponsor housing using another funding source.

- New and currently certified CHDOs must be competent in housing development in order to be certified or recertified. The required core housing development competencies are the knowledge, skills and ability to:

  - conduct market/needs analyses and conceptual project design;
  - choose and negotiate purchase of a suitable site;
  - select and work with architects and other consultants;
  - understand and comply with local planning, zoning and building requirements;
  - create a development pro forma and operating budget;
  - set rents or sales prices;
  - identify financing sources and apply for financing;
  - comply with other lender requirements;
  - deal with community concerns;

- comply with CEQA and NEPA requirements;
- choose and work with construction contractors;
- manage the construction process;
- choose and work with a management agent;
- successfully market a project; and
- comply with HOME program requirements, construction close-out and long-term obligations.

If the applicant for **certification or recertification** does not have the experience necessary to meet the above criteria, it can hire a consultant experienced in housing development to train the applicant's staff in the core housing development competencies listed above within two years of its CHDO certification. The executed contract must be provided, and the contract must include a training timetable requiring the training to commence not later than six months of the date of certification/recertification and requiring the training to be completed not later than two years from the date of certification/recertification, and must identify the names and titles of persons being trained and the specific core competencies in which they are being trained.

Certification Can Be Revoked

The Department shall monitor all CHDOs throughout the term of the certification to ensure continued compliance as a CHDO. If the Department determines that an organization no longer complies with the requirements of this section, the Department may declare the organization to be ineligible to apply for State HOME funds, and the Department may revoke the organization's CHDO certification.

A CHDO can only be funded for projects located in the geographic area for which it is certified.

CHDO Role: Owner, Developer, or Sponsor

CHDOs are prohibited from applying to the State for HOME funds to perform activities that do not include owning, sponsoring or developing affordable housing. Following are the definitions of "owner, developer, or sponsor". In any one of these roles, the CHDO is required to have effective project control.

1. CHDO as "Owner"

   The CHDO is an "owner" when it holds valid legal title to, or has a long term (99 year minimum) leasehold interest in a rental property. The CHDO may be an owner with one or more individuals, corporations, partnerships or other legal entities. If it owns the project in partnership, it or its wholly owned non-profit or for-profit subsidiary must be the managing general partner with effective control (i.e., decision-making authority) of the project. The CHDO may be both owner and developer, or may have another entity as the developer.

2. <u>CHDO as "Developer"</u>

A CHDO is a "developer" when it (a) either owns a property and develops a project, or has a contractual obligation to a property owner to develop a project, and (b) performs all the functions typically expected of for-profit developers, and assumes all the risks and rewards associated with being the project developer.

a) For rental housing, the CHDO must obtain financing, and rehabilitate or construct the project. If it owns the property, the CHDO may maintain ownership and manage the project over the long term, or it may transfer the project to another entity for long-term ownership and management. If it does not own the property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the Department.

<u>or</u>

b) For homebuyer programs, the CHDO must obtain project financing, rehabilitate or construct the dwelling(s), and have title of the property and the HOME loan/grant obligations transferred to a HOME qualified homebuyer within a specified timeframe. If it does not own the property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the Department.

In both of the above scenarios, developer fees, as allowed by the Department, are eligible soft costs under Section 92.206 of the HOME regulations.

3. <u>CHDO as a "Sponsor"</u>

A CHDO is a "sponsor" for HOME-assisted rental or homebuyer housing according to the circumstances outlined below. In either case, the CHDO must always own the property prior to the development phase of the project:

a) For HOME-assisted rental housing, the CHDO may develop a project that it solely or partially owns and agrees to convey ownership to a second non-profit organization at a predetermined time prior to or during development, or upon completion of the development of the project. The HOME funds are invested in the project owned by the CHDO. The CHDO sponsor selects, prior to commitment of HOME funds, the non-profit organization that will obtain ownership of the property. The non-profit assumes from the CHDO the HOME obligation (including any repayment of loans) for the project at a specified time. If the property is not transferred to the non-profit organization, the CHDO sponsor remains liable for the HOME loan/grant obligation.

The non-profit organization must be financially and legally separate from the CHDO sponsor. (The second non-profit may have been created by the CHDO;

nevertheless, it is a separate entity from the CHDO.) The CHDO sponsor must provide sufficient resources to the non-profit organization to ensure the development and long-term operation of the project.

or

b) For a HOME-assisted homebuyer program, the CHDO owns a property, and then shifts responsibility for the project to another non-profit at some specified time in the development process. The second non-profit, in turn, transfers title along with the HOME loan/grant obligations and resale/recapture requirements to a HOME-qualified homebuyer within a specified timeframe.

The HOME funds are invested in the property owned by the CHDO. The other non-profit being sponsored by the CHDO acquires the completed units, or brings to completion the rehabilitation or construction of the property. At completion of the rehabilitation or construction, the second non-profit is required to sell (transfer) the property along with the HOME loan/grant obligations to a homebuyer.

This sponsorship role could include a lease-purchase approach whereby the second non-profit would lease the property to a homebuyer for a period not to exceed three years. At the expiration of the lease, the second non-profit must sell or transfer the property along with the HOME loan/grant obligations to the homebuyer. If the property is not transferred, the second non-profit retains ownership and all HOME rental requirements will apply.

No substitution of CHDO Without Prior State Approval

Pursuant to the HOME Regulatory Agreement between the State and a CHDO, a CHDO **cannot** be removed as a project owner, developer, or sponsor without prior state approval. In addition, any such substitution could only be made with another State-certified CHDO.

This concludes the introduction to the HOME program. This manual is intended to assist our contractors. However, if any part of this document is in conflict with the fully executed Standard Agreement, the State HOME regulations or the Federal HOME regulations, those documents shall prevail.